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NO.

in the

Supreme Court

of the

United States

OCTOBER TERM, 1981

JAMES KANSINGER JONES,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

Law Offices of
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QUESTIONS PRESENTED

I

WHETHER PETITIONER WAS DENIED HIS DUE PROCESS RIGHTS WHEN PETITIONER WAS CONVICTED OF A CRIMINAL OFFENSE DESPITE THE FACT THAT IT WAS NOT PROVEN BEYOND A REASONABLE DOUBT THAT PETITIONER WAS GUILTY OF THE CRIME CHARGED.

PARTIES INVOLVED

The following are the parties involved in this Petition:

James Kansinger Jones
Kenneth Gerald Cheatham
State of Florida.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES INVOLVED ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTIONAL STATEMENT 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE AND FACTS 2

RAISING OF FEDERAL QUESTION 3

REASONS FOR GRANTING WRIT 3

I

WHETHER PETITIONER WAS DENIED HIS DUE PROCESS RIGHTS WHEN PETITIONER WAS CONVICTED OF A CRIMINAL OFFENSE DESPITE THE FACT THAT IT WAS NOT PROVEN BEYOND A REASONABLE DOUBT THAT PETITIONER WAS GUILTY OF THE CRIME CHARGED .. 3

CONCLUSION 9

CERTIFICATE OF SERVICE 10

TABLE OF AUTHORITIES

Page

Araujo-Lopez v. United States,
405 F.2d 466 (5th Cir. 1969) 4

In re: Winship,
90 S.Ct. 1068, 397 U.S. 358 (1970) 7

Jackson v. Virginia,
99 S.Ct. 2781 (1979) 2

United States v. Di Re,
332 U.S. 581, 66 S.Ct. 222, 92 L.Ed. 210 (1948) .. 4

United States v. Ferg,
404 F.2d 914 (5th Cir. 1974) 4, 6

United States v. Martin,
483 F.2d 974 (5th Cir. 1973) 4, 5

United States v. Stephenson,
474 F.2d 1353 (5th Cir. 1973) 4

OPINIONS BELOW

On May 6, 1981, the Fourth District Court of Appeals filed its opinion affirming the Judgment and Conviction in this case. On January 12, 1982, the court denied Petitioner's Motion for Rehearing and Motion for Rehearing en banc (a copy of these opinions are attached to the Appendix of this Petition).

JURISDICTIONAL STATEMENT

On May 6, 1981, the Fourth District Court of Appeals filed its opinion affirming the Judgment and Conviction in this case. On January 12, 1982, the court denied Petitioner's Motion for Rehearing and Motion for Rehearing en Banc.

This Court has jurisdiction to review this case pursuant to 28 U.S.C. §1257(3) and Rule 17(1)(b) of the Supreme Court Rules.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution is involved in this Petition. The complete text of this constitutional provision is included in the Appendix to this Petition.

STATEMENT OF THE CASE AND FACTS

On July 8, 1978, Petitioner Jones was charged by information in St. Lucie County, Florida, with one count of unlawful possession with intent to deliver marijuana. Petitioner pled not guilty and was tried by a jury. On February 26, 1980, he was adjudged guilty and sentenced to three years imprisonment followed by seven years probation.

On or about March 21, 1980, Petitioner filed his Notice of Appeal in the Florida Fourth District Court of Appeal. On May 6, 1981, the appellate court affirmed the judgment and conviction, per curium without an opinion.

On May 15, 1981, Petitioner filed a motion for rehearing and a motion for rehearing en banc. These motions were denied on January 12, 1982.

The record reflects the fact that on June 25, 1978, a roadblock was set up in Fort Pierce, Florida. At that time, Officer Ritter had been following a white Chevrolet van. The van pulled off the road prior to reaching the roadblock and both the driver and passenger left the van.

The van in which Petitioner was a passenger had dark brownish colored curtains which prevented one from seeing the interior of the van from the front seat.

No testimony indicated in any way that Petitioner had knowledge of the presence of contraband in the van. There was no testimony that indicated that Petitioner had the ability to maintain or control the contraband in

the van. Petitioner made no statements indicating that he had knowledge of the contraband.

RAISING OF FEDERAL QUESTION

This Petition deals with Petitioner's Fourteenth Amendment right to be free from conviction unless the State proves his guilt beyond a reasonable doubt.

At the end of the trial, counsel moved for Judgment of Acquittal based on the fact that there was insufficient evidence to convict Petitioner. Counsel for Petitioner also raised this issue on appeal.

REASONS FOR GRANTING WRIT

I

WHETHER PETITIONER WAS DENIED HIS DUE PROCESS RIGHTS WHEN PETITIONER WAS CONVICTED OF A CRIMINAL OFFENSE DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND A REASONABLE DOUBT.

This Court should review this case based on the fact that the state court opinion in this case is in direct conflict with numerous federal and Supreme Court cases. In *Jackson v. Virginia*, 99 S.Ct. 2781 (1979), this Court clearly recognized that a federal constitutional right is denied when a defendant is found guilty of a crime despite the fact that the State has failed to prove every element beyond and to the exclusion of every reasonable doubt.

The issue presented here also raises a serious issue that arises daily in every criminal court in this land. The issue is whether an occupant in a motor vehicle can be convicted of a possessory crime absent any proof that he had knowledge that contraband was in the car. Numerous federal cases have indicated that a conviction cannot stand based on the above-mentioned facts. This Court has never definitively ruled on this issue. This Court's ruling on the quantum of proof necessary to convict an occupant of a motor vehicle containing contraband would certainly benefit the bench and trial bar considerably.

The facts in this case reveal that Petitioner Jones was present in a motor vehicle, to-wit: a van, that contained a quantity of marijuana in the rear section. Petitioner Jones was the passenger in this van and did not drive the van nor did he own the van. No evidence introduced at trial connected Jones to the marijuana, other than the fact that he was present in the van that contained marijuana. The rear section of the van was shielded from view of the front seat occupants by curtains. It was also shielded in the back by curtains to prevent anyone outside from seeing what was inside. Thus, unless the driver or passenger knew in advance that bales of marijuana were in the van, they could not know from observation after the loading.

An analysis of many federal cases clearly reveals that the State in this case failed to introduce evidence beyond a reasonable doubt that Petitioner Jones possessed marijuana.

Mere presence at the scene, alone, proves nothing as to possession of or dominion over a drug. See, *United*

States v. Di Re, 332 U.S. 581, 66 S.Ct. 222, 92 L.Ed. 210 (1948); *Araujo-Lopez v. United States*, 405 F.2d 466 (5th Cir. 1969); *United States v. Martin*, 483 F.2d 974 (5th Cir. 1973).

In order to convict an individual of possession of marijuana, the Government, or in this case the State, must prove that the defendant was either in actual possession or in constructive possession. The State must show ownership, dominion or control of the illegal drug. See, *United States v. Stephenson*, 474 F.2d 1353 (5th Cir. 1973); *United States v. Ferg*, 404 F.2d 914 (5th Cir. 1974). Therefore, in this case, since Petitioner clearly was not in actual possession of the marijuana, it was the State's burden to prove that Petitioner Jones had knowledge as well as ownership, dominion or control of the marijuana.

An analysis of three federal cases will clearly reveal that the facts in this case were totally insufficient to establish constructive possession.

In *United States v. Stephenson, supra*, a defendant was seen outside a bar. A police officer approached him and searched him. No drugs were found. The officer proceeded to search a room inside the bar where a large quantity of heroin was discovered in envelopes. Defendant's fingerprints were found on seventeen of these envelopes. In reversing the conviction the Fifth Circuit Court of Appeals held:

> However, whatever the nature of the evidence, it must be such that a jury may reasonable infer that the person charged with constructive possession had dominion and control over the

> drug. *United States v. Mendoza*, 5 Cir. 1970, 433 F.2d 891, 896. By the same token, mere presence in the area where the narcotic is discovered or mere association with the person who does control the drug or the property where it is located, is insufficient to support a finding of possession. *United States v. Davis*, 3 Cir. 1972, 461 F.2d 1026, 1035, 1036; *United States v. Holland*, 1971, 144 U.S.App.D.C. 225, 445 F.2d 701, 703; *Smith v. United States*, 5 Cir. 1967, 385 F.2d 34, 39 n. 16.

In the instant case there were not even fingerprints or any other evidence that would connect Petitioner to the marijuana in the back of the van.

In *United States v. Martin, supra*, the defendant was arrested in a room where a drug transaction had taken place. In reversing the conviction, the Fifth Circuit Court of Appeals held:

> To establish constructive possession, however, there must be proof of dominion and control. *Garza v. United States*, 5th Cir. 1967, 385 F.2d 899; *Smith v. United States*, 5th Cir. 1967, 385 F.2d 34. We think this case is squarely governed by the rule that "mere presence in the area where the narcotic is discovered or mere association with the person who does control the drug or the property where it is located, is insufficient to support a finding of possession." *United States v. Stephenson*, 5th Cir. 1973, 474 F.2d 1353 [1973]. The evidence here is clearly insufficient.

As the defendant in the Martin case, Petitioner Jones was only shown to have been present in an area that contained an illegal substance. This clearly is insufficient to convict.

Finally, in the case of *United States v. Ferg, supra*, defendant Ferg was similar to Petitioner Jones, a passenger in a motor vehicle that contained marijuana. In reversing the conviction, the Fifth Circuit Court of Appeals ruled that there was no nexus between the defendant and the illegal substance. The court reiterated the long-standing statement of law that mere presence in an area where a narcotic is discovered is insufficient to support a finding of possession. The court said:

> The facts of this case illustrate the logic of this "mere presence" rule. The government presents only two pieces of circumstantial evidence in an attempt to link Ferg with the seized marijuana. Ferg was traveling with Shaw, the person who admitted having purchased the marijuana, and Ferg was a passenger in the car in which the marijuana was concealed. Beyond the admission by Ferg that he was a traveling companion of one guilty of illegal possession of marijuana, the government failed to establish that Ferg in any way violated 21 U.S.C. §841(a)(1). The government's evidence failed to prove that Ferg had ever maintained possession of the contraband or had any intention of participating in the distribution of it.

In this case, there was no evidence of Petitioner Jones' possible guilt other than the fact that he was riding in a van that contained marijuana. Clearly under

federal law, the evidence introduced at trial was insufficient to establish guilt beyond and to the exclusion of every reasonable doubt and would justify the granting of this Petition for Writ of Certiorari.

The United States Supreme Court in the case of *In re: Winship*, 90 S.Ct. 1068, 397 U.S. 358 (1970), stated the importance of requiring the Government to prove a defendant guilty beyond a reasonable doubt when the court stated:

> The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is a reasonable doubt about his guilt.

The court went on to emphasize the fact that a failure to prove a defendant guilty beyond a reasonable doubt is clearly a constitutional violation when it held:

> Lest there remain any doubt about the constitutional stature of the reasonable doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.

CONCLUSION

Based on the foregoing, it is urged that this Court grant certiorari in order to declare what quantum of evidence is necessary to convict an individual for possession of contraband.

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By:_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Writ of Certiorari was mailed to the Office of the United States Solicitor General, Department of Justice, Washington, D. C. 20530, and to Florida Attorney General's Office, 401 N.W. 2nd Avenue, Suite 820, Miami, Florida 33128.

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